

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-00534

CATHERINE FOLEY,)
)
Plaintiff,)
)
v.)
)
REPUBLIC AIRLINE, INC.,)
MIDWEST AIRLINES INC.,)
MIDWEST EXPRESS AIRLINES INC.,)
and FRONTIER AIRLINES, INC.,)
)
Defendants.)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendants Republic Airline, Inc. and Frontier Airlines, Inc., through undersigned counsel, hereby remove the above-captioned action from the General Court of Justice, Superior Court Division, of Wake County, North Carolina to the United States District Court for the Eastern District of North Carolina pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and, in support thereof, respectfully state:

BACKGROUND

1. On or about June 20, 2013, plaintiff Catherine Foley commenced this action against Republic Airline, Inc. (“Republic”), Frontier Airlines, Inc. (“Frontier”), Midwest Airlines, Inc. and Midwest Express Airlines, Inc. by filing a Complaint in the General Court of Justice, Superior Court Division, of Wake County, North Carolina, which case is captioned *Catherine Foley v. Republic Airline, Inc., Midwest Airlines, Inc., Midwest Express Airlines, Inc. and Frontier Airlines, Inc.*, No. 13 CV 008528.

TIMELINESS OF REMOVAL

2. Republic was served with the Summons and Complaint in this action on June 27, 2013. Frontier was served with the Summons and Complaint in this action on July 1, 2013. Accordingly, this notice of removal is timely filed by Republic and Frontier pursuant to 28 U.S.C. § 1446(b). A copy of the Summons and Complaint served upon Republic and Frontier is attached as Exhibit A.

BASIS FOR FEDERAL JURISDICTION

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that the action is between citizens of different States and, upon information and belief, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

Citizenship of Parties

4. According to the Complaint, plaintiff Catherine Foley is a North Carolina citizen. *See Complaint ¶ 1 (Exh. A).*

5. Republic is a corporation organized under the laws of the State of Indiana with its principal place of business in Indianapolis, Indiana. Frontier is a corporation organized under the laws of the State of Colorado with its principal place of business in Denver, Colorado. Midwest Express Airlines, Inc. and Midwest Airlines, Inc., also named as defendants in the Complaint, no longer exist as corporations and therefore may be disregarded for diversity purposes. Accordingly, there is complete diversity between the parties.

6. In 2009, Midwest Airlines, Inc., formerly named Midwest Express Airlines, Inc., was purchased by Frontier's parent corporation, Republic Airways Holdings, Inc. In November 2009, Midwest Airlines, Inc. ceased to exist as an operating airline, and its Department of

Transportation air carrier operating certificate was allowed to lapse. In 2010, Midwest Airlines, Inc. merged with Frontier, leaving Frontier as the surviving corporation.

Amount in Controversy

7. Although Republic and Frontier deny plaintiff's claims, the amount in controversy, upon information and belief, exceeds the sum of \$75,000, exclusive of interest and costs. The Complaint seeks monetary relief for alleged permanent injuries, lost wages, medical expenses and permanent disability, and, upon information and belief, the amount sought to be recovered by plaintiff in this action exceeds \$75,000, exclusive of interest and costs.

VENUE

8. Venue is proper in the United States District Court for the Eastern District of North Carolina because this judicial district embraces the place where the action is pending. 28 U.S.C. § 1441(a).

NOTICE TO PLAINTIFF AND STATE COURT

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for plaintiff, and a copy is being filed with the Clerk of the Superior Court of Wake County.

CONCLUSION

10. Pursuant to 28 U.S.C. § 1446, this case is properly removed to this Court because Republic and Frontier have satisfied all requirements for removal, and this Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332.

WHEREFORE, Republic and Frontier hereby remove this action from the General Court of Justice, Superior Court Division, of Wake County, North Carolina to this Court pursuant to 28 U.S.C. §§ 1332, 1441, 1446.

This the 26th day of July, 2013.

/s/ Robert J. Morris

Robert J. Morris
N.C. State Bar No. 15981
jmorris@smithlaw.com
SMITH ANDERSON BLOUNT DORSETT
MITCHELL & JERNIGAN, LLP
2300 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, North Carolina 27601
Telephone: (919) 821-1220
Facsimile: (919) 821-6800

Attorneys for Republic Airline Inc. and Frontier Airlines, Inc.

OF COUNSEL:

Brian T. Maye
bmaye@amm-law.com
ADLER MURPHY & MCQUILLEN LLP
20 S. Clark Street
Suite 2500
Chicago, Illinois 60603
Telephone: (312) 345-0700
Facsimile: (312) 345-9860

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2013, the foregoing Notice of Removal was served upon all parties hereto by depositing a copy in the United States mail, first class postage prepaid, addressed to

Jeanne H. Washburn
3737 Glenwood Avenue
Suite 100
Raleigh, NC 27612

Gregory Seibert
117 Glenwood Avenue
Raleigh, North Carolina 27612

/s/ Robert J. Morris
Robert J. Morris
N.C. State Bar No. 15981
jmorris@smithlaw.com
SMITH ANDERSON BLOUNT DORSETT
MITCHELL & JERNIGAN, LLP
2300 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, North Carolina 27601
Telephone: (919) 821-1220
Facsimile: (919) 821-6800